

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 PM-04 NSC-05 SP-02 SS-15 CIAE-00 INR-07

NSAE-00 OMB-01 L-03 ACDA-07 TRSE-00 EB-08 DOTE-00

/062 W

-----260924Z 048375 /13

R 260157Z JAN 77

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 5264

INFO DOD CG

CSAFCJACI

NAVY JAG WASHDC

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

13TH AF CLARK AB

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E.O. 11652: N/A

TAGS: MARR, RP, US

SUBJECT: CLARK AND SUBIC AERO CLUBS

REF: 13 AF MSG TO HQ PACAF DTG 100215Z JAN 77 (NOTAL)

1. SUMMARY: IN LAST FEW MONTHS, PHILIPPINE AIR FORCE, 1ST AIR DIVISION, WHICH IS RESPONSIBLE FOR CONTROL OF ALL AIRCRAFT IN PHILIPPINE AIR SPACE, HAS FOCUSED ON THE CLARK AIR BASE AND SUBIC NAVAL BASE AERO CLUBS AND HAS UNILATERALLY IMPOSED CERTAIN RESTRICTIONS ON AERO CLUB OPERATIONS. THE FOLLOWING SUMMARIZES SITUATION AND COMMENTS ARE REQUESTED. END SUMMARY.

2. SINCE MARTIAL LAW, CLARK AND SUBIC AERO CLUBS HAVE OBTAINED AUTHORITY TO OPERATE THEIR AIRCRAFT IN PHILIPPINE LIMITED OFFICIAL USE

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AIR SPACE FROM THE PHILIPPINE AIR FORCE (PAF). AUTHORITY TO OPERATE WAS NORMALLY GRANTED FOR A SIX-MONTH PERIOD AND RENEWED WITHOUT DIFFICULTY. HOWEVER, IN NOV 1976, EMBASSY WAS NOTIFIED THAT THERE WAS SOME QUESTION AS TO THE STATUS OF THE AERO CLUBS AND THE PROCEDURES PRESENTLY BEING UTILIZED. PAF THEN RENEWED AUTHORITY TO OPERATE FOR ONE MONTH FROM 1 DEC 1976 TO

31 DEC 1976.

3. MILITARY AND EMBASSY OFFICIALS THEN MET WITH PAF, 1ST AIR DIVISION OFFICERS IN AN ATTEMPT TO ASCERTAIN THE PROBLEM. PAF OFFICERS PRESENTED US WITH TWO OPINIONS, ONE BY DFA AND ANOTHER BY PHILIPPINE JAGS, WHICH WERE IN RESPONSE TO AN INQUIRY BY GENERAL BUENO, 1ST AIR DIVISION COMMANDER CONCERNING STATUS OF BASE AERO CLUBS. THE LETTER BY GENERAL BUENO WAS PROMPTED BY A LETTER OF INSTRUCTION NO. 3 ISSUED BY PRESIDENT MARCOS ON THE DAY MARTIAL LAW WAS DECLARED IN 1972, ORDERING THE SECRETARY OF NATIONAL DEFENSE TO DEVISE REASONABLE MEASURES TO CONTROL THE MOVEMENT OF FOREIGN-OWNED OR FOREIGN-REGISTERED AIRCRAFT TO PREVENT THEIR USE FOR PURPOSES INIMICAL TO NATIONAL INTERESTS. SECDEF ON SAME DAY DELEGATED THE RESPONSIBILITY TO CLEAR PRIVATE AIRCRAFT ENTERING OR DEPARTING THE COUNTRY TO PAF. UNTIL GENERAL BUENO'S ACTION IN NOV 1976, AERO CLUBS HAD NOT BEEN UNDULY AFFECTED BY THESE INSTRUCTIONS.

4. DFA, IN REPLY TO BUENO'S LETTER, ANSWERED IN ITS USUAL INCOMPETENT MANNER BY STATING THAT THE AERO CLUBS DID NOT FALL WITHIN THE PROVISIONS OF THE MILITARY BASES AGREEMENT (MBA), THAT THE PHILIPPINE CAA HAS NO JURISDICTION OVER AERO CLUB AIRCRAFT BECAUSE THEY CARRIED "N" REGISTRATION, AND THEN BRILLIANTLY STATED PROBLEM SHOULD BE SOLVED BY HAVING SUCH AIRCRAFT CARRY AN RP REGISTRATION; BUT IN CATCH-22 FASHION FURTHER STATED THAT RP REGISTRATION WOULD BE IMPOSSIBLE BECAUSE LIMITED OFFICIAL USE

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SUCH AIRCRAFT HAD TO BE WONED BY PHILIPPINE CITIZENS.

5. PAF JAG OPINION WAS SOMEWHAT MORE HELPFUL IN THAT IT FOUND THAT AERO CLUBS WERE WITHIN THE RPROVISIONS OF ARTICLE 18 OF THE MBA AND COULD OPERATE AT CLARK AND SUBIC BUT COULD NOT LAND AT ANY PHILIPPINE AIRPORT WITHOUT DIPLOMATIC CLEARANCES OR AUTHORITY FROM CAA. IT THEN SUGGESTED THAT IF LETTER OF INSTRUCTION NO. 3 WAS TO BE FULLY IMPLEMENTED, IT WOULD BE APPROPRIATE TO COORDINATE WITH THE U.S. AUTHORITIES THROUGH THE MUTUUL DEFENSE BOARD (MDB).

6. PAF OFFICERS RECOGNIZED THAT DFA OPINION WAS NOT VERY HELPFUL AND AGREED THAT AERO CLUBS WERE AUTHORIZED BY MBA AND THAT PHILIPPINE AUTHORITIES HAD JURISDICTION OVER "N" REGISTERED AIRCRAFT WHILE IN THE PHILIPPINE AIR SPACE OR TERRITORY FOR THE PURPOSE OF AIR TRAFFIC CONTROL AND ACCIDENT INVESTIGATION. A SYSTEM WAS THEN

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AGREED FOR AERO CLUBS TO FILE CROSS COUNTRY FLIGHT
PLANS 24 HOURS IN ADVANCE AND ANOTHER MONTH'S
EXTENSION TO OPERATE (1 JAN 1977 TO 31 JAN 1977) WAS
GRANTED.

7. IN ATTEMPTING TO EXPLORE WHY PAF FELT IT NECESSARY
TO IMPOSE RESTRICTIONS ON AERO CLUBS, IT BECAME
APPARENT THAT THEY CONSIDER AERO CLUBS SOME TYPE OF
THREAT TO NATIONAL SECURITY AND WERE UNDER THE
IMPRESSION THAT BASE AERO CLUBS WERE UNFAIRLY COMPETING
WITH GENERAL PHILIPPINE AIR CHARTER COMPANIES BY
CARRYING PASSENGERS FOR HIRE. ALSO, THEY APPARENTLY
WERE OPERATING UNDER THE MISTAKEN CONCEPT THAT THE
BASES WERE FOREIGN TERRITORY AND, THEREFORE, WHEN
AIRCRAFT DEPARTED THE BASE AND LANDED AT PHILIPPINE
CIVILIAN AIRPORTS, THEY WERE ON INTERNATIONAL FLIGHTS.
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8. U.S. MEMBERS ATTEMPTED TO EXPLAIN THAT FILING OF CROSS COUNTRY FLIGHT PLANS SHOULD DISPELL ANY PROBLEM WITH NATIONAL SECURITY AND THAT WE RECOGNIZED THEIR RIGHT TO REFUSE PERMISSION TO LAND AT CERTAIN AIRPORTS BECAUSE OF NATIONAL SECURITY PROBLEMS; BUT WE SHOULD BE ALLOWED TO USE ANY AIRPORTS OPEN TO THE GENERAL AVIATION PUBLIC. ALSO THAT THE BASES WERE PHILIPPINE TERRITORY AND IT WAS HARD TO UNDERSTAND THAT FLIGHTS FROM BASES TO PHILIPPINE CIVILIAN AIRPORTS WERE INTERNATIONAL FLIGHTS. ALSO, IT WAS EXPLAINED THAT AERO CLUB AIRCRAFT COULD ONLY FLY PERSONS WHO ARE MEMBERS OF THE AERO CLUB AND WHILE SUCH PERSONS COULD DIVIDE COST OF AIRCRAFT IN WHATEVER WAY DEEMED APPROPRIATE, NO AERO CLUB AIRCRAFT WAS USED FOR COMMERCIAL PURPOSES.

COMMENT: DEPENDING UPON HOW ONE LOOKS AT IT, THE PRESENT PRACTICE OF THE AERO CLUBS AS AUTHORIZED BY SERVICE REGULATIONS OF ALLOWING A SERVICEPERSON, US. CIVILIAN PERSONNEL OR THEIR DEPENDENTS, TO JOIN AERO CLUBS FOR NORMAL FEE (US \$1.00 OR 2.00 PER MONTH); PAY FOR THE AIRCRAFT TIME; HAVE AERO CLUB PILOT FLY AIRCRAFT FOR FLYING EXPERIENCE, BUT NOT FOR PAY; AND TAKE TEMPORARY MEMBER TO DESTINATION FOR DROP OFF AND PERHAPS LATER PICK UP, MAY BE CONSIDERED AS UTILIZING AERO CLUB AIRCRAFT FOR REMUNERATION. BASE AUTHORITIES ARE OF THE OPINION THAT SUCH OPERATION IS NOT FOR REMUNERATION; HOWEVER, IT IS A GRAY AREA THAT MAY CONTINUE TO CAUSE DIFFICULTY IN RESOLVING AERO CLUB ISSUE, END COMMENT.

9. 1ST AIR DIVISION OFFICIALS THEN SHOWED US A LETTER THAT THEY WERE CONSIDERING SENDING TO CG, PAF AND DFA THAT WOULD ONLY ALLOW AERO CLUB AIRCRAFT TO LAND AT THE FOUR INTERNATIONAL AIRPORTS IN THE PHILIPPINES -- MANILA, MACTAN, DAVAO AND ZAMBOANGA -- AFTER FILING APPROPRIATE FLIGHT PLANS. IN FURTHER DISCUSSION WITH LIMITED OFFICIAL USE

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GENERAL BUENO, EH APPEARED AMENABLE TO WORK OUT ARRANGEMENTS TO ALLOW USE OF OTHER AIRPORTS AND AGREED TO HAVE AERO CLUB ISSUES SUBMITTED TO MDB FOR CONSIDERATION.

10. AT SUBSEQUENT MEETING ON 21 JAN 1977, U.S. PANEL SUBMITTED LIST OF ABOUT 50 AIRPORTS THAT AERO CLUB AIRCRAFT USE ON A MORE OR LESS FREQUENT BASIS. (THERE ARE APPROXIMATELY 450 AIRPORTS IN THE PHILIPPINES.) IT WAS ALSO POINTED OUT THAT UNDER ARTICLE 15, CHICAGO CONVENTION, MEMBER STATES WERE OBLIGATED TO ALLOW FOREIGN-REGISTERED AIRCRAFT TO LAND AT ANY AIRFIELD IN MEMBER COUNTRY OPEN TO GENERAL

AVIATION EXCEPT AS MODIFIED BY ARTICLE 68 CONCERNING INTERNATIONAL FLIGHTS AND THAT WHILE WE WERE AGREEABLE TO AN INTERIM ARRANGEMENT LIMITING THE AIRPORTS, OUR POSITION WAS THAT A PERMANENT RESTRICTION WOULD VIOLATE ARTICLE 15. 1ST AIR DIVISION OFFICIALS RESPONDED THAT PHILIPPINES UNDER MARTIAL LAW AND THEREFORE UNDER ARTICLES 9 AND 89, CHICAGO CONVENTION, IT COULD PREVENT THE USE OF ANY CIVILIAN AIRPORT TO FOREIGN-REGISTERED AIRCRAFT AND IMPLIED THAT THEY WERE BEING MORE THAN REASONABLE TO ALLOW AERO CLUBS TO CONTINUE TO OPERATE EVEN WITH RESTRICTIONS. U.S. MEMBERS THEN REQUESTED THAT AUTHORITY TO OPERATE BE RENEWED PENDING MDB RESOLUTION.

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11. LATER SAME DAY, 1ST AIR DIVISION OFFICER CAME TO EMBASSY TO STATE THAT PAF WOULD NOT RENEW BLANKET AUTHORITY FOR AERO CLUBS TO CONTINUE TO FLY IN PHILIPPINE AIR SPACE BUT THEY WOULD APPROVE LIMITED AUTHORITY TO OPERATE UNDER THE FOLLOWING CONDITIONS:
(A) AERO CLUB AIRCRAFT LIMITED TO 11 AIRPORTS

(LOAG, BAGUIO, COSTELLEYOS, MANILA, LEGASPI, TACLOBAN, MACTAN, DEL MONTE, CAGAYAN DE ORO, DAVAO, AND ZAMBOANGA) PLUS CLARK AND CUBI;

(B) AERO CLUBS WOULD FILE FLIGHT PLANS 24 HOURS IN ADVANCE WITH PAF TASK GROUP COMMANDER AT CLARK AIR BASE;

(C) AERO CLUBS WOULD CERTIFY THAT AIRCRAFT NOT CARRYING PASSENGERS FOR REMUNERATION; AND LIMITED OFFICIAL USE

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(D) AERO CLUBS WOULD PAY ALL APPLICABLE LANDING AND PARKING FEES.

12. THEREFORE, THE PRESENT STATUS OF THE PROBLEM IS AS FOLLOWS -- BASE AERO CLUBS WILL SUBMIT REQUEST TO CONTINUE TO OPERATE IN PHILIPPINE AIR SPACE TO PAF. PAF WILL THEN ALLOW OPERATIONS UNDER CONDITIONS SPECIFIED IN #11 ABOVE. AERO CLUB ISSUE WILL BE CONSIDERED BY MDB CO-CHAIRMEN AND IF BOTH AGREE, IT WILL BE MADE AN AGENDA ITEM AND PROBABLY DELEGATED TO THE LEGAL AFFAIRS COMMITTEE OF THE MDB FOR CONSIDERATION AND RECOMMENDATIONS.

13. COMMENT: IT WOULD APPEAR THAT CONTEMPLATED ACTION BY PAF IS CLEARLY DISCRIMINATORY. RESTRICTIONS INDICATED ARE NOT IMPOSED UOPN RP-REGISTERED AIRCRAFT AND REPORTEDLY NOT UPON ALL OTHER FOREIGN-REGISTERED AIRCRAFT, ALTHOUGH THE LATTER DENIED BY PAF. POSSIBLY, THE ROOT CAUSE FOR THE PRESENT PROBLEM RESIDES IN THE BASES NEGOTIATIONS; BUT UNDUE RESTRICTIONS BY PAF WILL, IN EFFECT, PUT AERO CLUBS OUT OF OPERATION OR SO SEVERELY RESTRICT THEIR OPERATION AS TO LOSE THEIR VALUE AS RECREATIONSL ACTIVITY. APPROACHING DFA AT THIS TIME WOULD BE USELESS AS THEY HAVE ABDICATED ANY RESPONSIBILITY CONCERNING AIRCRAFT MATTERS TO PAF. END COMMENT.

14. ACTION REQUESTED: IN ORDER TO FORMULATE U.S. POSITION ON THIS MATTER BEFORE MDB MEETING, EMBASSY REQUESTS DEPARTMENT'S COMMENTS ON SITUATION ESPECIALLY ISSUES CONCERNING THE APPLICATION OF THE CHICAGO CONVENTION UNDER THIS SOMEWHAT UNIQUE SITUATION AND PRESENT AERO CLUB PRACTICE OF ALLOWING ELIGIBLE MBA PERSONNEL TO TEMPORARILY JOIN AERO CLUB TO OBTAIN TRANSPORTATION.
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Message Attributes

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Disposition Date: 22 May 2009
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To: STATE
Type: TE
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